

### **REMARKS/ARGUMENTS**

Claims 30-46 are pending. In light of the following remarks, Applicant believes all the pending claims are in condition for allowance.

Claims 30-46 were rejected under 35 USC 102(e) as allegedly being anticipated by U.S. Patent No. 6,408,403, issued June 18, 2002 to Rodrigues et al. (hereinafter "Rodrigues"). Accordingly, it is asserted that Rodrigues discloses all the features of these claims. For the following reasons, Applicant respectfully traverses the rejection.

Before getting to the specific features recited in the claims, it should be noted that the claims are directed to methods or products for producing scripts for load testing a software application. Rodrigues is not directed to generating scripts at all. In fact, a review of the background in the patent shows that Rodrigues asserts scripts provide unsatisfactory results (see, e.g., col. 2, lines 9-64). The solution proposed in Rodrigues is not to produce scripts, but instead to integrate test tools into the application program (col. 3, lines 38-41). As Rodrigues is directed to a fundamentally different way of testing application programs, it is not surprising the reference does not disclose all the features of the claims.

Rodrigues does not disclose "capturing calls on a computer system to emulate a user" as recited in claim 1. The Office Action cited the abstract, but this feature was not found in the abstract. More specifically, the Office Action cited col. 8., lines 1-59. A closer review of this section of the patent shows that initially, the reference describes embedding test operations within the application program during development. The reference later describes that embedding test operations within the application program allows for the "automated capture and analysis of test results" (col. 8, lines 53-55; emphasis supplied). The claim does not recite capturing test results, but instead recites capturing calls to emulate a user. Thus, the reference does not disclose the claimed feature.

Additionally, Rodrigues does not disclose "recording timing information of the captured calls" as recited in claim 1. The Office Action cited col. 9, lines 13-20 and specifically mentioned the statement in Rodrigues that embedding testing tools and methods "permit[s] highly automated testing to be performed at any time in the application program development

cycle.” This statement means that because the testing tools and methods are imbedded in the application program from the beginning, testing can be performed at any time while the application is being developed. This does not disclose that timing information is recorded from captured calls as claimed. Accordingly, the reference does not disclose this claimed feature.

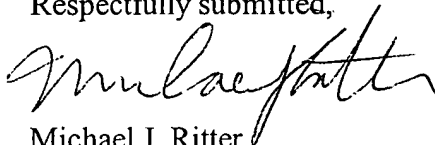
Lastly, Rodrigues does not disclose “generating a script from the captured application calls according to the timing information of the captured calls to emulate the user” as recited in claim 1. The Office Action cites many sections of the patent, but a closer review of each of these sections reveals that the solution proposed in Rodrigues is to embed test tools into the application program. The solution in Rodrigues is not directed to generating scripts at all, let alone scripts as recited in claim 1. The background of Rodrigues (see above) in fact literally teaches away from utilizing scripts to test application programs. When, as here, the patent does not disclose the feature claimed and actually teaches away from the feature, a prima facie case of anticipation is not supported.

In summary, Rodrigues does not disclose all the features of claim 1 so a prima facie case of anticipation has not been established. All the pending claims include similar features to claim 1 so they are all patentably distinct for at least the same reasons.

#### Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 446-8693.

Respectfully submitted,



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